

REMARKS/ARGUMENTS

Reconsideration of the application is requested.

Claims 1-6 remain in the application. None of the claims have been amended.

To begin with, the Examiner's courtesy during several telephone calls leading up to April 28, 2004 are appreciated. The Examiner requested that applicant provide a response or a preliminary response to the above-identified Office action which would then form the basis of the proposed interview before the Examiner and his supervisor. Our response follows.

We have once more very carefully studied the Examiner's interpretation of the prior art reference and the continued rejection of the claims. We respectfully point out that the rejection is entirely unwarranted and it is in error as it does not follow proper examination procedure as provided by the law and the guidelines. The rejection is not based on either a proper reading of the claims or on a proper reading of the reference Ernam et al. (hereinafter "Ernam").

This is not to say that we are not dealing here with complicated subject matter and we can only surmise that the rejection is essentially due to the fact that the instantly

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claimed invention is relatively complicated and that the reference Ernam is quite complicated in its disclosure and its implementation. The difficult subject matter, however, must not lead us astray and we must not lose sight of the fact that the disclosures are extremely divergent and that any similarities are purely coincidental. Unfortunately, the reference Ernam uses wording throughout the specification (e.g., "function," "geographic," "capacity," etc.). These terms also appear in applicant's claims, albeit in a considerably different context. The continued rejection appears to point towards a computerized word search or term search by the Examiner. Such searches, of course, should be treated very carefully and, as such, they cannot form the basis for a rejection under 35 U.S.C. §§ 102 and/or 103.

Ernam deals with a system in which overloads are avoided by providing an intermediary, i.e., a switching center that is configured in-between the base station system and the mobile switching center system. The intermediate MSC is referred to as a "dispatcher" or a "special MSC," or a "router MSC." As explained by Ernam, the dispatcher switch 32 assigns the subscribers (the mobile stations) "according to a prescribed assignment." Col. 6, line 25. The prescribed assignment is stored in a table. The association table, as illustrated in Figs. 3 and 4, for instance, contains two columns, namely the

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identification of the mobile station and the identification of its associated VLR. The association is rigid and stationary during a given time frame which is defined by the subscriber's geographic location. Ernam explains that while a given subscriber "moves within the serving area, it will always be homed to the same MSC/VLR." Col. 6, lines 35-37.

There is nothing in Ernam that even remotely resembles the functions that are recited in the first paragraph of the body of claim 1. We respectfully point out that the functions that are set-up in the first step are at least partly numerical functions in that they are functions of a "number of subscribers" and a "size of a load." The association in table 44 of Ernam cannot possibly be interpreted as any of these functions.

Similarly, the table in Fig. 6 of Ernam clearly does not show any such functions. Instead, the table shows a projected capacity increase that is provided according to Ernam's provision of the dispatcher MSC. In the table, Ernam explains that the non-geographic (i.e., non-geological) partition of the system and its implementation with the dispatcher MSC leads to an increase in the capacity of at least 20% in the case of one dispatcher per five regular MSCs. If anything, Ernam teaches against the geographic hierarchy separation as

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it is recited in the claims. The dispatcher MSC of Ernam distributes the mobile station signups to available MSCs in dependence on current signup capacity and current use.

Much in contrast, the instantly claimed invention provides for predictive switching. As explained in the second paragraph of the body of claim 1, we use the functions derived in the first step and set up a formula that predicts certain behavior on the basis of variables that come into play during the use of the system.

Specifically, there is no information in Ernam that he sets up a formula that utilizes functions obtained in the prior step and that is able to calculate (i.e., the formula permits the calculation) a predictive processing load. Ernam, instead, deals with a system in which various MSCs are selectively connected via a dispatcher MSC.

If that were not enough, the formula as mentioned above is then used to assign members of the two hierarchical levels such that a greatest possible growth is possible without overloading a given unit of the second hierarchical level. In other words, the assignment is provided on the basis of the formula to provide for the greatest cushion of extra processing power before the given unit would be maxed out.

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None of these steps are found in Ernam. The reference instead distributes assignments among the pool of MSCs in real-time processing "not based on geography, but relative loads and subscriber distribution." Col. 7, lines 28-29. The dispatcher MSC of Ernam establishes and processes communication between the pool of MSC and the base station subsystem and further distributes "mobile station subscribers and call related work among the pool of mobile switching centers (MSCs)." Claim 1, col. 11, lines 35-37.

The Examiner is earnestly requested to review the rejection in light of these remarks. Further, as agreed, the Examiner is requested to promptly set up an interview in which his SPE or Primary Examiner will participate. Counsel expects to receive a telephone call from the Examiner, and counsel will be prepared to answer any questions the Examiner may have.

In view of the foregoing, reconsideration and allowance of claims 1-6 are solicited.

Petition for extension is herewith made. The extension fee for response within a period of one month pursuant to Section 1.136(a) in the amount of \$110.00 in accordance with Section 1.17 is enclosed herewith.

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Please charge any other fees which might be due with respect
to Sections 1.16 and 1.17 to the Deposit Account of Lerner and
Greenberg, P.A., No. 12-1099.

Respectfully submitted,



For Applicant

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WHS:tk

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